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*D.R.*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/480,461 06/07/95 MICHELSON

G P-12550-(DIV)

QM32/0126  
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 EXAMINER

BROWN, M

ART UNIT	PAPER NUMBER
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3764

#15

**DATE MAILED:**

01/26/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No. 08/480,461	Applicant(s) Gary K. Michelson
Examiner Michael Brown	Group Art Unit 3764

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- Responsive to communication(s) filed on \_\_\_\_\_.
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

### Disposition of Claims

Claim(s) 90 and 95-140 is/are pending in the application.

Of the above claim(s) 90 and 140 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 95-101, 108-113, 116-121, 124-127, 129-130, 132-137 and 139 is/are rejected.

Claim(s) 102-107, 114-115, 122-123, 128, 131 and 138 is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892
- Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Other \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 95-101, 108-113, 116-121, 124-127, 129-130, 132-136 and 139 are rejected

under 35 U.S.C. 102(b) as being anticipated by Brantigan '915.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 137 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brantigan in view of Goble.

Brantigan discloses in figures 1-4 a spinal distractor, substantially as claimed. However, Brantigan does not disclose a tap used to thread the openings in the vertebrae. Goble teaches in

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figure 6 a tap 41. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the tap as taught by Goble could be substituted for a self tapping screw as disclosed by Brantigan because both devices are functionally equivalent with respect to forming a threaded opening in a vertebrae.

5. Claims 102-107, 114-115, 122-123, 128, 131 and 138 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. No additional prior art was cited during this first office action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown  
January 16, 2001



Michael A. Brown  
Primary Examiner